



STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
CARVEL STATE BUILDING
820 N. FRENCH STREET
WILMINGTON, DELAWARE 19801

DIVISION OF REVENUE

October 25, 1991

**TECHNICAL INFORMATION MEMORANDUM 91-2
ADDENDUM TO TECHNICAL INFORMATION MEMORANDUM 87-3 - TRANSIENT
RETAILERS**

This Memorandum addresses questions that have arisen due to legislative changes in the licensing of transient retailers. Technical Information Memorandum 87-3 is modified to the extent of this Memorandum. House Bill 259 as amended by House Amendment No. 1, (66 Del. Laws, Ch. 237) effective April 25, 1988, amended Title 6 relating to transient retailers. The amendment modified the definition of a "Temporary or Transient Business", made changes to the bonding requirements and added a new exemption from these requirements. The following summarized the amendments to 6 Del. C., Ch.47:

DEFINITION

"Temporary or transient business" is defined in Section 4702(3) as " ... any exhibition or sale of goods, wares or merchandise which is carried on in any building, structure, motor vehicle or real estate for less than either of following times during any consecutive twelve month period:

(a) a period of four months duration between commencement and cessation of the conduct of business; or

(b) a period of ninety actual days during which business is conducted."

Prior law defined "transient business" as the sale of goods, wares or merchandise for a period of less than six months during any twelve-month period.

BONDING REQUIREMENTS

Section 4707 requires, at the time of filing an application for a business license, that the applicant for a Transient Retailer license shall file and deposit with the Department of Finance a surety bond issued by an authorized surety insurer, or a cash bond, in the amount of \$1,000. Prior law required a bond of varying amounts based on the selling price of the highest priced item offered for sale. The new law also provides that in the discretion of the Director of Revenue, the amount of the bond may be reduced or waived. The Director of Revenue may waive the bond for corporate transient retailers whose principal administrative offices are located in a permanent or fixed location in Delaware and may waive the bond for all other transient retailers provided at least one person legally liable for the debts of the retailer maintains a permanent and fixed residence within this state. Under prior law, the bonding requirements could not be waived.

EXEMPTIONS

Subsection (10) was added to Section 4703 to provide an exemption from the Transient Retailer requirements for "Any special event, taking place within the confines of an enclosed retail shopping facility, having a total enclosed common area square footage, exclusive of the total square footage of all occupied retail space contained in said enclosed retail shopping facility, of not less than 20,000 square feet, where the transient merchant's goods, wares or merchandise are only displayed and sold within the confines of such enclosed retail shopping facility ..." This Section also requires that the shopping facility compile and maintain for four (4) years a listing of all transient retailers participating in each special event. This listing must include the name, address, telephone number and a general description of the type of goods or merchandise sold.

LICENSE FEES AND PRORATION

House Bill 728, effective January 1, 1990, amended Section 2905 of Title 30 of the Delaware Code to increase the annual license fee for Transient Retailers required to comply with the provisions of Chapter 47 of Title 6 of the Delaware Code to \$75 for the first location and \$25 for each additional location (when business is conducted at two or more locations on the same day). License fees under this Section are proratable in accordance with the provisions of Section 2121, 30 Del. C., which provides for the proration of the initial license fee based on the number of full calendar months of the license year that have expired prior to the issuance of the license.

COORDINATION WITH TITLE 30 OF THE DELAWARE CODE

Section 4703 of Title 6 of the Delaware Code enumerates ten exemptions from the registration, licensing and bonding requirements of Chapter 47. The exemptions contained in this Section only relate to the filing requirements of Chapter 47 and do not affect the licensing requirements contained in Chapter 29, Title 30 of the Delaware Code. Transient retailers, for example, selling goods at flea markets or special events in enclosed shopping malls are generally exempt from the registration and bonding provisions of Chapter 47 of Title 6, but are still required to obtain a business license from the Division of Revenue. In this instance, the license fee as a Transient Retailer is \$25 for the first location and \$10 for each additional location (when business is conducted at two or more locations on the same day). Such license permits the retailer to sell goods and wares for a period of ten (10) days (consecutive or non-consecutive). In such cases, the retailer is not required to post a bond or retain a registered agent as a requirement to obtain the license.



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